

IN THE COURT OF APPEALS OF IOWA

No. 3-228 / 12-1386
Filed May 15, 2013

RUSSELL BROWN,
Plaintiff-Appellee,

vs.

GUNCHIE'S, INC., A Corporation
d/b/a GUNCHIE'S,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, John D. Telleen,
Judge.

Gunchie's, Inc. appeals from the judgment entered in favor of Russell
Brown on his dramshop and negligence claims. **AFFIRMED.**

Dennis P. Ogden and Margaret C. Callahan of Belin McCormick, P.C.,
Des Moines, and Thomas A. Skorepa of Law Offices of Thomas A. Skorepa,
P.C., Rock Island, Illinois, for appellant.

Kathleen Bailey of Coyle, Stengel, Bailey & Robertson, Rock Island,
Illinois, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Russell Brown was injured in an altercation at Gunchie's, Inc. (Gunchie's) and brought suit against the business, alleging it was liable for his injuries under dramshop and negligence theories. A jury found in favor of Brown on both the dramshop and negligence claims, and judgment was entered against Gunchie's. On appeal, Gunchie's contends a directed verdict should have been granted on the dramshop claim because Brown failed to prove the intoxicated party caused his damages. It also contends Brown failed to establish Gunchie's was negligent.

We find sufficient evidence to generate a jury question on both claims. There is substantial evidence that Siem, a customer, was the proximate cause of Brown's injuries. Substantial evidence also shows Gunchie's failed to adequately and properly train its employees, and that this failure was the proximate cause of Brown's injuries. Accordingly, we affirm.

I. Background Facts and Proceedings.

Russell Brown and Diana Hardin had been dating on and off for more than ten years and were "on" again in February 2010 when Brown was injured in an altercation that occurred at Gunchie's. Diana was a bartender at Gunchie's and was on duty when Brown arrived at the bar between 12 a.m. and 1 a.m. Also present at the bar was Jimmy Siem, a regular patron of Gunchie's who had dated Diana in the fall of 2009. With Siem was Brad Dalton.

Brown and Diana appeared to be having an argument, so Dalton called Diana's brother, Les Hardin. Les arrived at the bar and asked Brown to leave.

While there are discrepancies in the testimony as to what happened next, it is undisputed that Les punched Brown in the jaw, causing Brown to fall to the floor. At that time, Siem charged Brown and began punching him repeatedly.

Tina Gonzalez was a customer at Gunchie's that night. Upon exiting the bathroom, she witnessed the fight, which was already in progress. Gonzalez saw Brown lying on the ground and watched as Siem hit him in the face three or four times while Les and Diana stood by. Brown was not fighting back. Gonzalez then intervened to stop the fight.

Brown suffered multiple facial fractures as a result of the altercation, including fractures of the eye sockets, the nose, and upper jaw. Dr. James Paul, who treated Brown, testified that Brown's upper jaw, which encompasses the upper teeth, was completely separated from the rest of his skull. Brown underwent two surgeries to address his injuries.

Brown filed a petition against Gunchie's alleging dramshop liability and negligence. The case proceeded to a jury trial. At the close of Brown's evidence, Gunchie's moved for a directed verdict. Because there was insufficient evidence that Les Hardin was served alcohol beverages at Gunchie's or was intoxicated on the night in question, the district court granted a directed verdict on the dramshop count related to Les Hardin's intoxication. It also granted a directed verdict in favor of Gunchie's on three of Brown's specifications of negligence. The case was submitted to the jury on the question of dramshop liability with respect to Siem, and on two claims of negligence: (1) failure to

remove or have the police remove Les Hardin and Siem from the premises and (2) failure to adequately and properly train its employees.

The jury found in favor of Brown on both his dramshop and negligence claims. It awarded Brown \$127,915 in damages; \$41,715 in past medical expenses, \$85,000 for past pain and suffering, and \$1200 for lost wages. With respect to the negligence claim, the jury found Brown was five percent at fault, reducing Brown's damages on that claim to \$121,519.25. However, because Brown is only entitled to a single recovery for his damages and his dramshop damages were not reduced, the court entered judgment in favor of Brown in the amount of \$127,915.

II. Scope and Standard of Review.

We review denials of motions for judgment notwithstanding the verdict and motions for directed verdict for the correction of errors at law. *Pavone v. Kirke*, 801 N.W.2d 477, 486 (Iowa 2011) (motions for directed verdict); *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 846 (Iowa 2010) (motions for judgment notwithstanding the verdict). Our review is limited to those grounds raised in the motion for directed verdict. *Royal Indem. Co.*, 786 N.W.2d at 844-45

III. Dramshop Claim.

Iowa's dramshop statute provides that any person injured by an intoxicated person may bring an action against any licensee who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when it was known, or should have been known, that the person was or would become

intoxicated. Iowa Code § 123.92(1)(a) (2009). To sustain a cause of action for dramshop liability, Brown was required to show that (1) Gunchie's sold and served intoxicating beverages to Siem when it knew, or should have known, that he was intoxicated or knew, or should have known, that he would become intoxicated from the drinks served, and (2) as a proximate result of Siem's intoxication, Brown was injured. See *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 148 (Iowa 2002).

Gunchie's does not dispute that Brown has proved the first element of his dramshop claim. Instead, Gunchie's contends the district court erred in failing to direct a verdict in its favor or grant judgment notwithstanding the verdict on Brown's dram shop claim because there is insufficient evidence that Brown was damaged as a proximate result of Siem's intoxication. Specifically, Gunchie's argues there is insufficient evidence by which the jury could find Siem was responsible for Brown's injuries when Les Hardin struck Brown first. Gunchie's claims Brown failed "to negate the possibility that Les Hardin's prior punch caused all of Brown's injuries."

A directed verdict is required if there lacks substantial evidence to support the plaintiff's claim. *Pavone*, 801 N.W.2d at 487. Evidence is substantial if reasonable minds would accept it as adequate to reach the same findings. *Id.* "Where reasonable minds could differ on an issue, directed verdict is improper and the case must go to the jury." *Id.* Therefore, we must determine whether the district court properly found there was substantial evidence to submit the issue to

the jury. *Id.* We view the evidence in the light most favorable to the nonmoving party, taking into consideration all reasonable inferences that could be made. *Id.*

We find substantial evidence by which the jury could find Siem was the proximate cause of Brown's injuries. While Les Hardin punched Brown before Siem, the evidence shows he punched Brown one time in the jaw and Brown fell to the ground. Siem then jumped on top of Brown and started taking what Siem described as "wild punches" at him. Siem punched Brown at least three or four times that Gonzalez witnessed. Brown testified that Siem struck him on the "[l]eft, right side of my face and nose area." Les had to pull Siem off of Brown.

Brown sustained a LeFort II fracture, which Dr. Paul described as "a fracture that's much like a pyramid through the skull on the front of the face," with fractures that could be seen through the nasal cavity on the right and left side, as well as fractures that went through the eye socket. The injury essentially separated Brown's upper jaw from the rest of his skull.

Dr. Paul could not state whether the injury was caused by one person or by one hundred. He also testified that he'd seen that type of damage occur from one punch. However, when all the evidence is considered, the fact that Les Hardin punched Brown once in the jaw was not more likely to cause Brown's injuries than Siem's multiple blows to the face that were landed while atop Brown, who was lying prone. Because substantial evidence supports the dramshop claim, we affirm.

IV. Negligence.

Gunchie's also alleges there is insufficient evidence to generate a jury question on the negligence verdict with regard to either of Brown's theories.

In order to succeed on his negligence claim, Brown was required to prove that: (1) Gunchie's was negligent either in failing to (a) remove Les Hardin and Siem from the premises or (b) adequately and properly train its employees; (2) the negligence was the proximate cause of Brown's damage; and (3) the amount of the damage.

Viewing the evidence in the light most favorable to Brown, we find reasonable minds could differ on whether Brown proved his negligence claim. Eric Vastine, the owner of Gunchie's, testified that the bartenders are responsible for security. Art Rivera, the head bartender, trained Diana Hardin. Diana testified that Rivera instructed her not to call 911. Vastine testified that Diana did not receive training on how to identify people who are intoxicated. Diana served Siem on the night of the altercation even though he was intoxicated. Gonzalez testified that when she saw Brown being attacked, Diana was doing "nothing"; Diana did not call 911 or do anything to stop the fight.¹ Based on this evidence, a jury could find Gunchie's failed to adequately and properly train its employees, which was the proximate cause of Brown's damage. Accordingly, we affirm the denial of Gunchie's motion for directed verdict on the negligence claim.

¹ In the recently decided case of *Hoyt v. Gutterz Bowl & Lounge, L.L.C.*, ___ N.W.2d ___, 2013 WL 1360420, at *4-5 (Iowa 2013), our supreme court determined as a matter of law that a tavern has a duty to exercise reasonable care to protect its patrons from third-party criminal attacks.

The evidence also shows that Diana knew her brother Les was a fighter and had engaged in a parking lot fight at Gunchie's just one month earlier, knocking another patron unconscious. Diana testified that she knew Gunchie's had a policy on banning people, but that she did not know exactly what it was: "[B]ut it's for people who come in and fight they usually get banned, that's all I know." Diana testified that she wanted to ban Les from Gunchie's after he punched a patron the month before, but she did not believe she had that authority. There was sufficient evidence for the district court to submit this specification of negligence to the jury.

Because the district court properly denied Gunchie's motion for directed verdict, we affirm.

AFFIRMED.